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09/802,237

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Christopher Keith

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52531

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11/20/2008

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EXAMINER

GRAHAM, CLEMENT B

ART UNIT

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3696

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/802,237	Applicant(s) KEITH, CHRISTOPHER	
	Examiner Clement B. Graham	Art Unit 3696	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 8/13/08.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>9/1/01, 9/12/06, 10/13/06, 4/24/07, 10/31/07, 1/4/08,</u> | 6) <input type="checkbox"/> Other: _____ |
| <u>3/12/08, 8/13/08, 10/24/08.</u> | |

DETAILED ACTION

1. Claims 1-28 remained pending and claims 29-34 has been added.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1, 4, 12, 15, 23, are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Applicant's claims are directed to an algorithm. Specifically, claims recites "sending "receiving report" , however these steps are mere ideas in the abstract (i.e., abstract idea, law of nature, natural phenomena) that do not apply, involve, for example) and abstract ideas without a practical application are found to be non-statutory subject matter. Therefore, Applicant's claims are non-statutory as they do not produce a useful, concrete and tangible result.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-28, are rejected under 35 U.S.C. 103(a) as being unpatentable over Gutterman et al

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(Hereinafter Gutterman US Patent No 5, 297, 031) in view of Nelson US Patent No: 4, 823, 265.

As per claims 1-2, Gutterman discloses a method of facilitating trading, comprising:

(Currently amended) A method of facilitating trading, comprising:

automatically, via a computer sending a trial order to a market, wherein the trial order identifies an item to trade and indicates a quantity and a price for the item, and wherein the trial order is configured for its indicated quantity to be automatically set to zero when the trial order is paired with a contra-side order, and receiving a report when the trial order is paired with a contra-side order in which the trial order is paired for a zero quantity of the item, wherein the trial order provides discovery of current market depth for the item at the indicated quantity and price. (Note abstract see column 7 lines 45-67 and column 8 lines 1-32 and column 5 lines 59-67 and column 6 lines 1-67).

Gutterman fail to explicitly teach while resulting in a pairing for a zero quantity of the item.

However Nelson discloses the current market price of the underlying security is listed on the display. Offer prices are listed according to strike prices which may (as shown) be described in set increments, or may be equal to or related to the current market price of the security. Bid (buyer offer) and asked (written offer) prices are also listed for each strike price. Alternatively, a single price representing the current market price of the renewable option at each strike price may be listed. As a third alternative, the price of each renewable option may

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also be set by the listing agent or the writing agent for the listing agent if the market is generated internally by the listing agent rather than through a multi-access exchange. Prices may even be set by standardized formulas. Prices may obviously be affected by a variety of factors, but writers may well choose to list the price of the renewable options as a fixed percent of the strike/market price on the basis of prevailing interest rates and stock dividends yields, for example. (see column 6 lines 3-21 and column 8 lines 53-60 and column 9 lines 18-28).

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Gutterman to include while resulting in a pairing for a zero quantity of the item taught by Nelson in order to provide price information or advice on various orders.

As per claim 3, Gutterman discloses wherein the automatically sending and receiving are performed by a trading process (Note abstract see column 7 lines 45-67 and column 8 lines 1-32 and column 5 lines 59-67 and column 6 lines 1-67).

As per claims 4, 8, 10-11, Gutterman discloses a method of facilitating trading, comprising: automatically, via a computer receiving a trial order, that identifies an item to trade and indicates a quantity and a price for the item, pairing the trial order with a contra-side order, wherein upon pairing, the quantity indicated in the trial order is automatically adjusted to zero as a result of being a trial order, which produces a pairing of the trial order with the contra-side order for a

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zero quantity of the item, and reporting the pairing of the trial order for the zero quantity of the item (Note abstract see column 7 lines 45-67 and column 8 lines 1-32 and column 5 lines 59-67 and column 6 lines 1-67).

Guttermann fail to explicitly teach would have been paired had it been a regular order.

However Nelson discloses the current market price of the underlying security is listed on the display. Offer prices are listed according to strike prices which may (as shown) be described in set increments, or may be equal to or related to the current market price of the security. Bid (buyer offer) and asked (written offer) prices are also listed for each strike price. Alternatively, a single price representing the current market price of the renewable option at each strike price may be listed. As a third alternative, the price of each renewable option may also be set by the listing agent or the writing agent for the listing agent if the market is generated internally by the listing agent rather than through a multi-access exchange. Prices may even be set by standardized formulas. Prices may obviously be affected by a variety of factors, but writers may well choose to list the price of the renewable options as a fixed percent of the strike/market price on the basis of prevailing interest rates and stock dividends yields, for example. (see column 6 lines 321 and column 8 lines 53-60 and column 9 lines 18-28).

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Guttermann to include would have been paired

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had it been a regular order taught by Nelson in order to provide price information or advice on various orders.

As per claim 5, Gutterman discloses further comprising selecting the trial order for pairing with the contra-side order without affecting the pairing priority of other orders in the order file (Note abstract see column 7 lines 45-67 and column 8 lines 1-32 and column 5 lines 59-67 and column 6 lines 1-67).

As per claim 6, Gutterman discloses, wherein reporting the pairing of the trial order includes sending a pairing report for the zero quantity of the item to a source of the trial order (Note abstract see column 7 lines 45-67 and column 8 lines 1-32 and column 5 lines 59-67 and column 6 lines 167).

As per claim 7, Gutterman discloses wherein the pairing report includes the price at which the trial order was paired with the contra-side order (Note abstract see column 7 lines 45-67 and column 8 lines 1-32 and column 5 lines 59-67 and column 6 lines 167).

As per claim 9, Gutterman discloses further comprising automatically removing the trial order from the order file after reporting the pairing of the trial order (Note abstract see column 7 lines 45-67 and column 8 lines 1-32 and column 5 lines 59-67 and column 6 lines 1-67).

As per claims 12, Gutterman discloses a system configured to facilitate trading, comprising:

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A system configured to facilitate trading, comprising: a computing component configured to send a trial order to a market that enables market participants to trade items, wherein the trial order identifies an item to trade and indicates a quantity and a price for the item, and wherein the trial order differs from a regular order in that when the trial order is paired with a contra-side order, the quantity in the trial order is automatically set to zero, and wherein the computing component is further configured to receive a ~ report from the market in which the trial order is reported as paired with a contra-side order for a zero quantity of the item, wherein the trial order provides discovery of current market depth for the item at the indicated quantity and price (Note abstract see column 7 lines 45-67 and column 8 lines 1-32 and column 5 lines 5967 and column 6 lines 1-67).

Guttermann fail to explicitly teach while resulting in a pairing for a zero quantity of the item.

However Nelson discloses the current market price of the underlying security is listed on the display. Offer prices are listed according to strike prices which may (as shown) be described in set increments, or may be equal to or related to the current market price of the security. Bid (buyer offer) and asked (written offer) prices are also listed for each strike price.

Alternatively, a single price representing the current market price of the renewable option at each strike price may be listed. As a third alternative, the price of each renewable option may also be set by the listing agent or the writing agent for the listing agent if the market is generated internally by the listing agent rather than through a multi-access exchange. Prices

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may even be set by standardized formulas. Prices may obviously be affected by a variety of factors, but writers may well choose to list the price of the renewable options as a fixed percent of the strike/market price on the basis of prevailing interest rates and stock dividends yields, for example (see column 6 lines 3-21 and column 8 lines 53-60 and column 9 lines 18-28).

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Gutterman to include while resulting in a pairing for a zero quantity of the item taught by Nelson in order to provide price information or advice on various orders.

As per claims 13, Gutterman discloses wherein the report received by the computing component also indicates the price at which the trial order was paired with the contra-side order (Note abstract see column 7 lines 45-67 and column 8 lines 1-32 and column 5 lines 59-67 and column 6 lines 1-67).

As per claims 14, Gutterman discloses the computing component is configured to execute a trading process that sends the trial order and receives the report (Note abstract see column 7 lines 45-67 and column 8 lines 1-32 and column 5 lines 59-67 and column 6 lines 1-67).

As per claims 15, Gutterman discloses a system configured to facilitate trading, comprising: one or more computing components configured to receive a trial order, that identifies an item to trade and indicates a quantity and a price for the item, and pair the trial order with a contra- side order, wherein upon pairing the quantity indicated in the trial order is automatically set to zero as a

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result of being a trial order, producing a pairing of the trial order with the contra-side order for a zero quantity of the item, and wherein the one or more (Note abstract see column 7 lines 45-67 and column 8 lines 1-32 and column 5 lines 59-67 and column 6 lines 1-67).

Guterman fail to explicitly teach computing components are further configured to report the pairing of the trial order for the zero quantity of the item.

However Nelson discloses the current market price of the underlying security is listed on the display. Offer prices are listed according to strike prices which may (as shown) be described in set increments, or may be equal to or related to the current market price of the security. Bid (buyer offer) and asked (written offer) prices are also listed for each strike price.

Alternatively, a single price representing the current market price of the renewable option at each strike price may be listed. As a third alternative, the price of each renewable option may also be set by the listing agent or the writing agent for the listing agent if the market is generated internally by the listing agent rather than through a multi-access exchange. Prices may even be set by standardized formulas. Prices may obviously be affected by a variety of factors, but writers may well choose to list the price of the renewable options as a fixed percent of the strike/market price on the basis of prevailing interest rates and stock dividends yields, for example. (see column 6 lines 3-21 and column 8 lines 53-60 and column 9 lines 18-28).

Therefore it would have been obvious to one of ordinary skill in the art at the time the

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invention was made to modify the teachings of Gutterman to include computing components are further configured to report the pairing of the trial order for the zero quantity of the item taught by Nelson in order to provide price information or advice on various orders.

As per claims 16, Gutterman discloses wherein the one or more computing components are further configured to select the trial order for pairing with the contra-side order without affecting the pairing priority of other orders in the order file (Note abstract see column 7 lines 45-67 and column 8 lines 1-32 and column 5 lines 59-67 and column 6 lines 1-67).

As per claims 17, Gutterman discloses wherein the one or more computing components are configured to report [[when]] the pairing of the trial order by sending a pairing report for the zero quantity of the item to a source of the trial order (Note abstract see column 7 lines 45-67 and column 8 lines 1-32 and column 5 lines 59-67 and column 6 lines 1-67).

As per claims 18, Gutterman discloses wherein the pairing report includes the price at which the trial order was paired with the contra-side order (Note abstract see column 7 lines 45-67 and column 8 lines 1-32 and column 5 lines 59-67 and column 6 lines 1-67).

As per claims 19, Gutterman discloses wherein the one or more computing components are further configured to automatically respond to a market based on orders in the order file other than the trial order (Note abstract see column 7 lines 45-67 and column 8 lines 1-32 and column 5 lines 59-67 and column 6 lines 1-67).

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per claims 20, Gutterman discloses wherein the one or more computing components are further configured to automatically remove the trial order from the order file after reporting the pairing of the trial order (Note abstract see column 7 lines 45-67 and column 8 lines 1-32 and column 5 lines 59-67 and column 6 lines 1-67).

As per claims 21, Gutterman discloses wherein the one or more computing components are configured to execute a market process that performs the receiving, pairing, and reporting, wherein the market process is configured to provide a market at which market participants trade items (Note abstract see column 7 lines 45-67 and column 8 lines 1-32 and column 5 lines 59-67 and column 6 lines 1-67).

As per claims 22, Gutterman discloses wherein the one or more computing components are configured to receive the trial order from a trading process (Note abstract see column 7 lines 45-67 and column 8 lines 1-32 and column 5 lines 59-67 and column 6 lines 1-67).

As per claims 23, Gutterman discloses a computer-accessible medium having executable instructions stored thereon for facilitating trading at a market that enables market participants to trade items, wherein the instructions, when executed, cause a computer to:
receive a trial order, that identifies an item to trade and indicates a quantity and a price for the item, pair the trial order with a contra-side order, wherein upon pairing the quantity indicated in the trial order is automatically adjusted to zero as a result of being a trial order, which produces a

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pairing of the trial order with the contra-side order for a zero quantity of the item, and report the pairing of the trial order for the zero quantity of the item (Note abstract see column 7 lines 45-67 and column 8 lines 1-32 and column 5 lines 59-67 and column 6 lines 1-67).

Guttermann fail to explicitly teach would have been paired at the market had it been a regular order.

However Nelson discloses the current market price of the underlying security is listed on the display. Offer prices are listed according to strike prices which may (as shown) be described in set increments, or may be equal to or related to the current market price of the security. Bid (buyer offer) and asked (written offer) prices are also listed for each strike price.

Alternatively, a single price representing the current market price of the renewable option at each strike price may be listed. As a third alternative, the price of each renewable option may also be set by the listing agent or the writing agent for the listing agent if the market is generated internally by the listing agent rather than through a multi-access exchange. Prices may even be set by standardized formulas. Prices may obviously be affected by a variety of factors, but writers may well choose to list the price of the renewable options as a fixed percent of the strike/market price on the basis of prevailing interest rates and stock dividends yields, for example. (see column 6 lines 3-21 and column 8 lines 53-60 and column 9 lines 18-28).

Therefore it would have been obvious to one of ordinary skill in the art at the time the

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invention was made to modify the teachings of Gutterman to include would have been paired at the market had it been a regular order taught by Nelson in order to provide price information or advice on various orders.

As per claims 24, Gutterman discloses wherein the executable instructions further cause the computer to select the trial order for pairing with the contra-side order without affecting the pairing priority of other orders in the order file (Note abstract see column 7 lines 45-67 and column 8 lines 1-32 and column 5 lines 59-67 and column 6 lines 1-67).

As per claims 25, Gutterman discloses wherein the instructions, when executed, cause the computer to send a pairing report for the zero quantity of the item to a source of the trial order (Note abstract see column 7 lines 45-67 and column 8 lines 1-32 and column 5 lines 59-67 and column 6 lines 1-67).

As per claims 26, Gutterman discloses wherein the pairing report includes the price at which the trial order was paired with the contra-side order (Note abstract see column 7 lines 45-67 and column 8 lines 1-32 and column 5 lines 59-67 and column 6 lines 1-67).

As per claims 27, Gutterman discloses wherein the executable instructions further cause the computer to respond to market inquiries based on orders in the order file other than the trial order (Note abstract see column 7 lines 45-67 and column 8 lines 1-32 and column 5 lines 59-67 and column 6 lines 1-67).

As per claims 28, Gutterman discloses wherein the executable instructions further

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cause the computer to remove the trial order from the order file after reporting paired the pairing of the trial order (Note abstract see column 7 lines 45-67 and column 8 lines 1-32 and column 5 lines 59-67 and column 6 lines 1-67).

As per claims 29, Gutterman discloses further comprising entering the trial order into an order file that contains orders to be paired with contra-side orders (Note abstract see column 7 lines 45-67 and column 8 lines 1-32 and column 5 lines 59-67 and column 6 lines 1-67).

As per claims 30, Gutterman discloses wherein the order file is maintained by a market process that provides a market that enables market participants to trade items (Note abstract see column 7 lines 45-67 and column 8 lines 1-32 and column 5 lines 59-67 and column 6 lines 1-67).

As per claims 31, Gutterman discloses wherein the one or more computing components are further configured to enter the trial order into an order file that contains orders to be paired with contra-side orders (Note abstract see column 7 lines 45-67 and column 8 lines 1-32 and column 5 lines 59-67 and column 6 lines 1-67).

As per claims 32, Gutterman discloses wherein the order file is maintained by a market process that provides a market that enables market participants to trade items (Note abstract see column 7 lines 45-67 and column 8 lines 1-32 and column 5 lines 59-67 and column 6 lines 1-67).

As per claims 33, Gutterman discloses wherein the executable instructions further cause the computer to enter the trial order into an order file that contains orders to be paired with contra-side orders (Note abstract see column 7 lines 45-67 and column 8 lines 1-32 and column 5 lines 59-67 and column 6 lines 1-67).

As per claims 34, Gutterman discloses wherein the order file is maintained by a market process that provides a market that enables market participants to trade items (Note abstract see column 7 lines 45-67 and column 8 lines 1-32 and column 5 lines 59-67 and column 6 lines 1-67).

CONCLUSION

Response to arguments

4. Applicant's arguments filed on 8/13/2008 has been considered but they are moot in view of new grounds of rejections.

5. In response to Applicant's arguments that Gutterman and Nelson fail to teach or suggest" sending a trial order to a market wherein the trial order identifies an item to trade and indicates a quantity and price for the item, and wherein the trial order is configured for its indicated quantity to be automatically set to zero when the trial order is paired with a contra-side order and receiving a paring report that the trial order is paired with a contra side order in which the trial order is paired for a zero quantity of the item wherein a trial order provides discovery of current market depth for the item the indicated quantity and price while

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resulting in a pairing for a zero quantity of the item“ the examiner disagrees with Applicant’s because Applicant’s claims limitations were addressed as stated.

Gutterman discloses sending a trial order to a market wherein the trial order(i. e, trial order”) identifies an item to trade and indicates a quantity and price for the item, and wherein the trial order is configured for its indicated quantity to be automatically set to zero (see column 7 lines 45-67 and column 8 lines 1-32 and column 5 lines 59-67 and column 6 lines 1-67) when the trial order is paired with a contra-side order and receiving a paring report (“i. e, displaying orders”) that the trial order is paired with a contra side order in which the trial order is paired for a zero quantity of the item wherein a trial order provides discovery of current market depth for the item the indicated quantity and price while resulting in a pairing for a zero quantity of the item (Note abstract see column 7 lines 45-67 and column 8 lines 1-32 and column 5 lines 59-67 and column 6 lines 1-67).

Nelson discloses the current market price of the underlying security is listed on the display. Offer prices are listed according to strike prices which may (as shown) be described in set increments, or may be equal to or related to the current market price of the security. Bid (buyer offer) and asked (written offer) prices are also listed for each strike price. Alternatively, a single price representing the current market price of the renewable option at each strike price may be listed. As a third alternative, the price of each renewable option may also be set by the listing agent or the writing agent for the listing agent if the market is generated internally

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by the listing agent rather than through a multi-access exchange. Prices may even be set by standardized formulas. Prices may obviously be affected by a variety of factors, but writers may well choose to list the price of the renewable options as a fixed percent of the strike/market price on the basis of prevailing interest rates and stock dividends yields, for example. (see column 6 lines 3-21 and column 8 lines 53-60 and column 9 lines 18-28).

Therefore it is obviously clear that Applicant's claimed limitations were addressed within the teachings of Gutterman and Nelson.

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Clement B. Graham whose telephone number is 571-272-6795. The examiner can normally be reached on 7am to 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Dixon can be reached on (571) 272-6803. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Frantzy Poinvil/
Primary Examiner, Art Unit 3696

CG 11/5/08